HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
HONOURABLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.22195 OF 1999
Dated:13.07.2006

–
–

The State of A.P., reptd by its
Mandal Revenue Officer,
Golconda Mandal.

…Petitioner

Sri Kedarmal and another.

…Respondents

HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
HONOURABLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.22195 OF 1999

–
–

ORDER: *(per the Hon'ble Sri Justice T.Ch.Surya Rao)*

The instant writ petition has been filed by the State assailing the order, dated 28.02.1997, passed by the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad (for short 'the Special Court) in L.G.C.No.13 of 1996. The unsuccessful applicant is the writ petitioner.

2. The State filed the application in L.G.C.No.13 of

1996 before the Special Court mentioning, *inter alia,* that the respondent herein had grabbed 475 square meters of land covered by T.S.Nos.6 and 7, Block 'D', Ward-24 corresponding to Sy.No.28/1/P of Asifnagar Village, Golconda Mandal, within the limits of Municipal Corporation of Hyderabad and constructed a pucca house therein over ten years back and that the land, thus grabbed**,** was classified as 'Sarkari Poramboke'. The respondent was served with a notice under Section-7 of A.P. Land Encroachment Act, 1905, on 21.04.1995 (for short 'the Land Encroachment Act'). Having noticed that the explanation offered by him to the notice issued Section-7 of the Land Encroachment Act was not convincing, a summary eviction order was passed under Section-6 of the Land Encroachment Act. However, the physical eviction could not be taken place due to non-availability of police protection. Therefore, the applicant prayed to declare the respondent as a land grabber and sought eviction from the disputed site.

3. The respondent, on the other hand, pleaded that one Md.Wajeeuddin was the original owner of the house bearing No.978/1, the schedule land and building with appurtenant land situated at Asifnagar locality and the said Wajeeuddin sold that property to one Rahatunnisa

Begum by way of an auction and executed sale deed, dated 21st Amardad 1356 Fasli and that the said Rahatunnisa Begum in turn sold the said property to the respondent herein under a registered sale deed, dated 27.03.1967, for a valid consideration of Rs.4,000/- and that thereafter the respondent also purchased another property bearing Municipal No.12-2-876/3, admeasuring 362 square yards, which is adjacent to the property purchased by him from Rahatunnisa Begum, from one Sri Chand and one Bharwarlal under a registered sale deed, dated 09.08.1971, and that the respondent made an application to the Municipal Corporation of Hyderabad for construction of a house and pursuant to the permission granted by the Corporation in permit No.99/59 of 1974, he constructed a house as per the plan and thereafter, he constructed an oil mill, after having obtained a licence from Municipal Corporation of Hyderabad and therefore, he was not a land grabber. It was his further case that he paid non-agricultural land assessment to the Office of the Tahsildar, Hyderabad, for the period between 1992-93 and 1994-95 and 1995-96.

4. On the basis of the above pleadings, the Special Court framed the following three issues: -

"1. Whether the applicant is the owner of the petition

schedule property?

2. Whether the respondent is a land grabber within the meaning of the Act XII of 1982?

3. To what relief?"

5. At the time of enquiry, one witness was examined on the side of the applicant and the documents, Exs.A-1 to A-9 were got marked. The respondent examined himself as R.W-1 and Exs.B-1 to B-20 were got marked.

6. Appreciating the evidence, both oral and documentary, on record, the Special Court dismissed the application, while holding that the applicant was not the owner of the petition schedule land and that the application was barred by limitation under Section-27 of the Indian Limitation Act, having regard to the long standing possession of the respondent. Having been aggrieved by the said judgment and decree, the State filed the present writ petition seeking a Writ of Certiorari.

7. It may be made clear, at the outset, that this Court is not sitting in appeal over the judgment of the Special Court. Having due regard to the limitations in exercising the Certiorari jurisdiction by this Court, we shall have to see whether the Special Court has committed any illegality by exercising the wrong jurisdiction or by failing to exercise the jurisdiction, either way.

8. Here is a case, where the revenue records, Exs.A-2, A-4 to A-6 clearly show that the land in dispute has been recorded as 'Sarkari Poramboke'. The Special Court sought to avoid the voluminous documentary evidence with a simple stroke that no notice, as envisaged under Section-9 (2) of the A.P. Survey and Boundaries Act, has been issued to the respondent before making the survey and preparation of the consequential registers.

9. On the other hand, the Special Court seeks to place reliance upon Exs.B-1, B-2 and B-3-sale transactions and was eventually of the view that having regard to the long standing possession right from 1356 Fasli onwards, the respondent perfected his right by adverse possession and therefore, the application was barred by limitation under Section-27 of the Indian Limitation Act. In the process, the Special Court was oblivious of one glaring fact that in all pahanis filed under Ex.A-5, the land has been shown as a vacant land. Admittedly, the respondent constructed a house and an Oil mill only after 1971. Till then, the land was lying vacant, having been registered as poramboke land in the relevant revenue records. The effective possession of the

respondent could be seen only from 1971 onwards, when he got a house and an Oil mill constructed therein, after having obtained necessary permission from the Municipal Corporation. Exs.B-1 to B-3 shall have to be localized to show that they cover the land in dispute. No such attempt has been made by the respondent to show that these documents relate to the land in dispute, particularly having regard to the plea taken by the applicant that those documents do not relate to the land in dispute. The Special Court has also ignored the fact that Section-7 notice was issued, under the provisions of the Encroachment Act, to the respondent followed up by a summary eviction order under Section-6 of the Land Encroachment Act. The order passed under Section-6 of the Land Encroachment Act, under Ex.A-8, attained finality since no appeal has been preferred as against the said order before a competent authority nor a suit has been filed before a competent civil Court assailing the same. The respondent, who suffered the summary eviction order under Ex.A-8, coolly and calmly kept quiet without initiating any action whatsoever available under law to him. In view of these glaring facts, which are emerging out from the record, the findings of the Special Court that the application was barred by limitation under Section-27 of the Indian Limitation Act appears, obviously,

to be erroneous and contrary to the record.

10. The party must specifically plead and prove that the title of the Government was extinguished on account of his long standing possession over more than a period of 30 years in his own right and adverse to the interest of the paramount title holder i.e., the State herein, whereas there is no such proof coming forth in this case. A clear dichotomy can be seen from the stand taken by the respondent, *inter alia,* in the written statement, who pleaded title in the first instance, stating specifically that he purchased the land in question by means of a registered sale deed under Ex.B-1 and his vendor purchased the said land under Ex.B-3-sale deed. Having thus set up title on himself, he cannot, now, be allowed to plead the title by prescription simultaneously. Once the party is inclined to plead a derivative title, he cannot be permitted to plead simultaneously a title by prescription, without electing to opt one or the other; certainly, he cannot be permitted to take both the pleas simultaneously. The impugned order, therefore, suffers from this vice, which had been lost sight of by the Special Court. Therefore, on account of this glaring illegality, the impugned order, dated 28.02.1997, is liable to be set aside.

11. In the result, the writ petition is allowed. However, under the circumstances, no separate order as to costs.

_____

T.CH.SURYA RAO, J

_____

G.CHANDRAIAH, J

13.07.2006
DR